

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.497 OF 2005
ALONGWITH**

CRIMINAL WRIT PETITION NO.498 OF 2005

Mrs Malini Nitin Patil

...Petitioner

V/s.

M/s. Sagar Mills & Ors.

...Respondents

Mr.R.D. Soni i/b. M/s. Ram & Co. for Petitioner.

Mr.Madhav Jamdar for Respondent No.1.

Mr.Y.S. Shinde APP for the State.

CORAM : V.M. KANADE, J.

DATED : 28th AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent No.1.

2. Both these Writ Petitions can be disposed of by a common order since parties are the same and subject matter of both the Writ Petitions is also the same. Petitioner in Writ Petition No.497/05 is the original Accused No.1 (for the sake of convenience he shall be referred

to as Accused No.1). Respondent No.1 is the original Complainant. Respondent No.2 and 3 are the original Accused No.2 and 3 (for the sake of convenience, the Respondent No.1 shall be referred to as original Complainant and Respondent No.2 and 3 shall be referred to as original Accused No.2 and 3).

3. Petitioner/Accused No.1 has filed Writ Petition No.497/05 challenging the order dated 27/09/2004 which is annexed at Ex.F, which was passed by the Sessions Judge, Nasik, dismissing the Criminal Revision Application filed by the Accused No.1. Petitioner/Accused No.1 has filed another Writ Petition No.498/05 challenging the order dated 27/09/2004 which is annexed at Ex.G, whereby Criminal Revision Application filed by Accused No.1 challenging the order passed by the Magistrate rejecting his applications at Ex.36, 50 and 54 in S.C.No.1784/1999, was, in turn, dismissed by the Sessions Court.

4. Brief facts which are relevant for the purpose of deciding these Writ Petitions are as under:-

Original Complainant filed a complaint against the Accused No.1 for the offence punishable U/s.138 of N.I. Act on the ground that cheque which was issued by the Accused was dishonoured. Learned Magistrate was pleased to issue process on the said complaint U/s.138 of N.I. Act. In the meantime, it appears that Accused No.2 settled the matter out of the Court with the Original Complainant and therefore, the Complainant filed an application at Ex.49. Learned Magistrate was pleased to pass the following order on the said Pursis at Ex.49:-

ORDER

"In view of the pursis Ex.49, it is clear from that complainant does not want to proceed against accused No.2 and accused No.3 firm. Hence, the complaint stands disposed off as against any accused No.2 & 3 being withdrawn by the complainant. The accused No.2 & 3 are discharged of offence p/u/sec.138 of Act. Their bail bonds stand cancelled. "

It is admitted position that on the same date, said order was modified by the learned Magistrate by passing following order.

ORDER

"As it is pointed out by Adv. for Complainant, in view of contents of pursis Ex.49, accused No.3 is discharged any to the extent of liability of accused No.2 in said firm. Earlier order hereinabove stands certified to that extent immediately on the same day."

5. Thereafter original Accused No.1 filed three applications at Ex.36, 50 and 54. The application at Ex.36 was an application for recalling the process on the various grounds. The application at Ex.50 was an application for dismissal of the case against the Accused No.1 in view of the order passed by the Magistrate below Ex.49. The application at Ex.54 was filed contending therein that the Accused No.1 had retired from the partnership firm on 15/2/2000 itself and as such, she was not liable in the present case. All these applications were dismissed by the Magistrate by order dated 4/2/2002. Against said order, a revision application has been preferred by the Accused No.1 in the Sessions Court. Sessions Court also dismissed the application by an order dated 27/09/04. Against aforesaid order, Criminal Writ Petition No.498/05 has been filed by Accused No.1. Similarly another Writ Petition No.497/05 also has been filed challenging the order at Ex.F.

Both these Writ Petitions can be disposed of by an common order.

6. In my view, the learned Magistrate was not competent to modify order which was passed by him below Ex.49. In view of provisions of Section 362 of Cr.P.C. , it was not open for the Magistrate to modify his own order. Apex Court in the case of Adalat Prasad V/s. Rooplal Jindal & Ors. reported in 2004(4) Mh.L.J. 274 also held that Magistrate has no power to review or modify order including reviewing or recalling order of process which was issued by him. This being a legal position, it was not open for the Accused No.1 to file the applications below Ex.36, 50, 54, since the Magistrate was not competent to decide said applications. In my view, therefore, order passed on these applications is no-vest and liable to be quashed and set aside. Order passed by the Sessions Court in the Revision Application challenging order passed in these applications also does not survive. Since the Magistrate himself did not have jurisdiction to decide this application, orders passed on these applications, therefore, are no-vest and could not have been challenged before the Sessions Court. In

the result, order of modification passed by the Magistrate below Ex.49 is quashed and set aside. Order passed by the Magistrate below Ex.36, 50 and 54 also are quashed and set aside and for the same reasons, orders passed in revision applications, passed by the Sessions Court are also quashed and set aside.

7. Accused No.1 is at liberty to file an appropriate application seeking recalling of process or for making such application which he had filed before the Magistrate by a revision application before the Sessions Court. If such an application is filed by the Accused No.1, Sessions Court shall decide the application on merits. If it is filed within four weeks from today, said application shall be decided expeditiously and in any case, within two months thereafter. All contentions raised by the Accused no.1 and Complainant are kept open. If a revision application is filed by the Accused No.1, same shall be considered on merits and in accordance with law and Sessions Court shall not be influenced by any observations made, if any, by this Court while disposing of these writ petitions.

. With these directions, both the Writ Petitions are disposed of accordingly.

V.M. KANADE, J.